

LAKE COUNTY BOARD of ADJUSTMENT
March 9, 2016
Lake County Courthouse Commissioners Office (Rm 211)
Meeting Minutes

MEMBERS PRESENT: Frank Mutch, Steve Rosso, Don Patterson, Merle Parise

STAFF PRESENT: LaDana Hintz, Robert Costa, Jacob Feistner, Lita Fonda, Wally Congdon

Frank Mutch, vice chair, called the meeting to order at 4:06 pm

Motion made by Steve Rosso, and seconded by Don Patterson, to approve the Feb. 10, 2016 meeting minutes. Motion carried, all in favor.

LaDana noted that the agenda order had been changed. Johna Morrison felt the old business should go first, given Roberts Rules of Order. Frank responded that those were a flexible guideline per the bylaws. Discussion ensued. Frank thought Mendenhall would take a long time. For efficiency, it was reasonable to move along [with Brown]. The Board agreed.

BROWN VARIANCE—SWAN SITES (4:10 pm)

Jacob Feistner presented the staff report. (See attachments to minutes in the March 2016 meeting file for staff report.)

Steve asked when the deck was constructed. Jacob responded that staff became aware of it last fall at which time it was under construction but not completed. He didn't know the date it began but believed it was last year. Steve referred to pg. 16, item c and hardship, which mentioned significantly more slope than many of the other lots. Jacob said he looked at other lots. He was working with two other landowners in that area who had the same zoning regulations but much different circumstances when it came to topography of the lot. Steve asked about the rock wall discussion and lakeshore development. Jacob explained the applicants had questions about what they could do with their shoreline. They had a lot of vegetation and siltation. This was just a site visit. They already had a dock and rock wall. The rock wall continued down through the next property and into the one beyond. It appeared to have been there historically for a long time. Steve asked if it was permitted. Jacob said there was not record of a permit. He hadn't inquired about that. Peter Brown said it was there when they bought the property. They kind of reassembled it when it partially fell down. Jacob clarified it was a loose rock wall. It wasn't cemented or mortared.

Rob Smith, agent, spoke. They were in substantial agreement with the staff report and the recommendations.

Steve asked when the patio work commenced. Peter replied they poured some concrete footings for it in the 1980's when they first bought the lot. The cabin was constructed in

2002. They'd been building the deck and patio for probably 6 or 7 years. They just put the roof on it last summer. They asked Lake County for some advice on the beach and discovered this [needed a permit]. He understood this was on him. He hadn't realized they needed the permit. Steve checked that they got a permit for the building and they didn't think they needed a permit for the deck. Peter said there was a lot of misconception out there with the contracting community and with the local landowners. Rob highlighted the 50-foot setback that was normal in a lot of portions of Swan Sites versus the 70 feet in this section. Steve said there was confusion on the setback and also confusion on what needed a permit.

Public comment opened: None offered. *Public comment closed.*

Steve expressed frustration with after-the-fact situations. He hoped as time went by, they would have fewer of these. Looking at the deck area, he saw how far it stuck out. They were right at 50 feet except for the stairway, which was attached to the deck so it was part of the deck. That actually put them 10 feet in to the 50-foot setback. Jacob clarified that the buffer allowed for stairways and walkways. If it was a separate piece, you could permit it in the 50-foot setback. Because it was attached, it brought in the whole thing. Steve reminded they looked at whether the variance was the minimum that would alleviate the hardship. He guessed that if this had come to the Board before the project started, they would have discussed reconfiguring the deck a little to get the square footage without extending so far into the setback area. They didn't have that option as easily now. Peter described that the stairs were placed there since the slope was so steep that the kids were wearing a path by running up and down the slope. They put this there to stop the erosion.

Steve pointed to the discussion of the mitigation for going into the setback. Part of that had to do with the buffer and the stormwater management. He read the end of condition #6. He wanted to clarify that no work could proceed on the deck until the buffer and stormwater management were complete. He thought the project should stop until the mitigation work was done to alleviate the problems that the advancement into the buffer might possibly have caused. Peter said they were committed to getting that done and would not object to that.

Steve restated that he'd like to see the last things done be the roof and the deck rather than the stormwater management and the landscaping. Don read it differently. The plan needed to be reviewed and approved. That was the stormwater plan. Both Don and Steve agreed that #6 talked about the stormwater. The Board members discussed possible word changes. Rob said generally with these stormwater plans, the easiest place to catch clean water to infiltrate was in gutters. Steve said the infiltrator could be installed in the ground and could wait for the gutter and downspout. The landscaping and replanting could be done. Rob said as long as they understood the guttering was part of the stormwater. Steve pointed to a similar sentence in condition #5 (shortly before the bullets). ***The Board changed the last word 'project' in both of these sentences to 'patio, deck and covered deck'.*** Jacob asked if the proposal was that they could work on them simultaneously. Steve thought they could work in parallel. He just didn't want the deck

finished before the landscaping and stormwater work that was to mitigate the impacts of having the deck.

Frank commented that the 70-foot setback was a big deal because it was inconsistent with the 50-foot, which was the standard in other places. He'd like to see some of this get back to the Planning Board. The report said it wasn't known why there was a 70-foot setback. If they didn't know [the reason], and if there wasn't an overriding consideration to protect the environment or whatever, then maybe they should recommend that in time, the setback be 50 feet to make it uniform. Frank also reiterated that each and every tract was different. In a situation with a steep slope and bad soil, maybe they'd need more than 50 feet. He thought they needed to look at the performance part rather than a rule to fit everything. Steve pointed to the amendment process as an opportunity for the people in the area. Staff and Commissioners could also offer amendments. LaDana said her understanding was that the zoning closely resembled the covenant document. The covenants probably had this. The closest [reason] they could come up with was that it might be tied to the floodplain. When the floodplain maps were updated in 2013, they did lower the floodplain on Swan Lake. Someone in the district might know why it was put at 70 feet. Peter said the difficulty was most people didn't realize the covenants were adopted as part of the zoning. [Editors' note: Peter was very difficult to hear.]

Motion made by Frank Mutch, and seconded by Don Patterson, to approve the variance subject to findings, terms and conditions in the staff report, including the changes to condition #5 and condition #6 as mentioned above. Motion carried, all in favor.

MENDENHALL VARIANCE & CONDITIONAL USES—EAST SHORE (4:35pm)

Robert Costa referred to the March 2, 2016 memo, a copy of the Mendenhall section of the January 13, 2016 minutes and the staff report dated February 5, 2016. (See attachments to minutes in the March 2016 meeting file for these materials.) He updated the Board on revisions and changes as part of the staff report. A call to Holly Mendenhall was attempted but she was not available to answer.

Frank checked about the soils test. He thought it was a condition to do this if granted. Robert agreed. Frank said this seemed to say it was a requirement. Robert said that was not the intent. They'd discussed it and requested if possible that be included. Frank thought the tone sounded like if they didn't have a soils test for the construction site, because of other conditions such as a high water table, fragile soils, erosion, unknowns and so forth, that it didn't look reasonable whereas it had before. Robert said they'd suggested modifying the sanitation aspects of the proposal in January and moving some of the increased impacts away. It wasn't just that a soil test wasn't submitted. There were increased impacts. At this point, they didn't know what those would be. If the proposal was modified as discussed in January, they could still get the soil test in and get something suggesting that was okay and work with it. At this point, if they weren't going to modify the sanitation aspects, there should be more assurance it can still work to allow further review. If the Board disagreed with that point, it was still included as a condition.

Frank thought the proposed sanitation system had looked okay. He recalled discussion of the well versus the sanitation system and the separation. One or the other had needed to move to get the separation. Robert clarified they had requested relocation for both. Frank asked if a soils test would help resolve some of the issues. Robert thought that was up to the Board to decide. If the Board approved it with that condition, it would still have to have it. It was up to the Board whether or not they thought they had enough information. The staff's opinion was they weren't comfortable with it.

Frank commented the impacts on the adjacent property from the well seemed solved by the latest proposal. Robert said they had questions on the ability to get up there but that was a practicality of construction.

Jeff Larsen, civil engineer and surveyor, spoke as an agent for the project. He outlined his extensive professional engineering background, which included work on sensitive areas next to water bodies. He was also a licensed professional land surveyor in Montana. He listed involvement in a number of professional organizations and extensive time on the Flathead County Planning Board. He wanted to show that he had the qualifications and background to practice engineering in Montana, where you had to be licensed to practice engineering.

Jeff said that this item was tabled, which meant it was left the way it sat previously. The Board asked for specific information, including a reevaluation of the water and sewer systems in line with the discussion, a look at adjacent property impacts and a look at the guest house. The guest house square footage wasn't in the proposal and was going to be added. He wrote a letter with attachments to the Planning staff on 1/25/16, which he went through item by item with the Board, who had the letter as attachment 6. For the first item, addressing the Bigfork Fire Dept. comments, he referred to the 1/21/16 letter from the Bigfork Fire District interim chief, attachment 9. The new site plan the Board had was adjusted accordingly, with the access on the south side of the main house. The revised site plan also addressed the next point to modify the site plan to propose fiber rolls and silt fence adjacent to the northern property boundary and at least 50 feet away from high water. To clarify whether the original water right date would be kept if a new well was drilled, Jeff referred to a 1/14/16 email from Marc Pitman of DNRC, attachment 5. It said, "Replacing a well and filing a well replacement notice for the well described in their existing water right will not jeopardize their water right. The priority will not be changed."

Regarding the reevaluation of sanitation aspects of the proposal, he recalled that Steve asked them to talk with Diana Luke, Environmental Health director. Her response was attachment 7. At the end of the second paragraph, he read a sentence that the proposed wastewater treatment system met the minimum standards listed. He described that in order to use an alternative location, a soil profile would be required in the drainfield area. If there were signs of groundwater, monitoring would be required through the 2016 groundwater season. The Board had asked if that would be required and if it could delay the project. It could, if there were signs of groundwater. He summarized his view put forth in his letter in that since he designed a system that met the State and County

requirements, it wasn't justified to move the drainfield location and potentially delay the project. He reported that Diana Luke was ready to issue the permit after the use permits were approved. If the Board had looked at his design, he far exceeded the minimum requirements on the system. It was designed for level 2 treatment, which wasn't required. The Mendenhalls were doing that because they cared about the lake. In his professional opinion, this was the best place to put that drainfield on this property.

Jeff read through the reasons listed in his 1/25/16 letter (attachment 6 in the staff report) for not moving the septic system, which he'd also given at the 1/13/16 meeting. These included a longer transport line for more likelihood of leakage, more disturbed area, more vegetation removal and more detrimental effects on the environment, water and wildlife. The sand mound offered the best technology for protecting water quality. Moving the system would increase the likelihood of pump failure and would need pressure dosing. In his professional opinion, he'd placed this in the best location.

Jeff referred to staff report comments about multiple pumps in the septic system design. He clarified there was a recirculation pump in the advance treatment system which wasn't involved in dosing the tank or getting effluent to the drainfield. It was involved in treating the effluent to a higher level. Also the elevated sand mound increased the depth to groundwater. This also protected the groundwater. This was the preferred design, in his opinion. When you were near a lake, you did whatever you could to protect the water quality of that lake.

Jeff picked up with #5 in his 1/25/16 letter, to demonstrate how drilling and use of a new well could occur without negative impacts. The site plan showed the well was moved. The suggestion on that from the last meeting was great. It was now above the drainfield so there was no impact with the drainfield and would be easy to get a truck in there.

The soil test was mentioned earlier. This was not something the Board said he had to do. He looked at this as a condition you would do before you built the house but after you had the permit. Because it was an issue in this new report, he got Alpine Geotechnical to go there. He and another professional engineer looked at three different test holes at the house location on 2/17/16. Two were by the lower corners and one was up by the SE corner by the top part of the house. He summarized the report Kagan [Rutz] prepared for the geotechnical analysis at the site. The house location sat on a bedrock layer, which was the most stable condition for a house as far as loading and bearing pressures. [The bedrock] would have to be hammered out of there.

Jeff talked about slope stability reports. One thing they did was to dig test holes and observe them. The three test holes showed no sign of groundwater. Another was they looked at the surrounding area. There were no signs of slumps, slides or soil movement on the property. The property to the south had done an excavation where you could look at the contours. That slope was steeper and stable. The road cuts were completely stable there. Based on the bedrock, it was a stable place to put that house. Kagan essentially said this house could easily be built here and gave certain engineering recommendations.

Regarding the adjacent properties, both neighbors had septic permits. Those were far enough away that this project's well and septic had no impact. The concern about the well at the bottom was alleviated by moving the well.

Jeff thought the main issues the Board had asked him about had been addressed. He handed around a picture of the drainfield area. He pointed out the nice slope and that the area was already cleared out. You would have to clear cut an area on the property to put the drainfield somewhere else. It was a very nice site for the drainfield. He referred to the alternative proposals of attachment 15. Two were similar, with the house near the loop of the road. The problem was the house was located right on top of the drainfield treatment system and probably about 3 feet from the base of the sand mound. These two didn't meet the setback requirements. The other two had it below the drainfield. The residence was shown within 10 feet of the bottom basal area of the elevated sand mound. You had to have 25 feet of undisturbed area below an elevated sand mound so you couldn't put a house there and meet the requirements. A Lake County septic system had to be designed by a registered professional engineer or sanitarian, not planners or attorneys. He showed the steep slope report with slope stability analysis from the Sept. 2015 submittal and the erosion and sedimentation plan. This addressed section 8 of the zoning regulations regarding reasonable variance for building a residence on slopes over 25%. The report contained fire protection, access, soil, erosion and storm drainage. A concern with it came up after the last meeting. He felt he should have been called if there was a problem with it so he could address the problem. The report had been fine previously. He looked at what the regulations said and followed them. They hadn't asked for the four alternative proposals. The project had been tabled. The only new information he thought should have been presented was the guest house square footage. The rest was tabled along with the staff report. They asked for specific information from him. He asked them to specifically clarify that for him, and they had. He specifically addressed those concerns.

Frank shared some of his own extensive background. This Board was here to help. They tabled this because they wanted to see it approved and some of the issues resolved. He respected Jeff's professionalism and license. He considered engineering to be an art. There wasn't one final best solution to a project. He added some background on the other two board members present. He thought they'd gotten the wrong tone here, and if they'd offended [Jeff] some way, he apologized but on the same token, they weren't trying to step on his feet or tell him what to do. He asked if Jeff wanted to hear more on Don or Steve's resumes. Jeff replied he gave background so they would know he was qualified to design septic systems. Frank assured that they knew that. He had a different design philosophy of keeping it simple. He hoped they could get on the right foot. They wanted to get this project done in the best way for all parties.

Frank asked Jeff for clarification on the soils report. Jeff said they'd looked at those soils. Based on the soils report, they could safely build on that slope. He was ready to submit it for the condition.

Steve commented, as a retired engineer, that it was sometimes hard to separate parts of a design that met the regulations but they questioned the practicality and safety, and whether the land owner really understood what they're getting into. Sometimes they delved into these things to have confidence that somebody had looked at alternatives and thought things through. When they wanted to look at another septic site, they just wanted to make sure all of the options had been reviewed. He gave the example of the well and the water right date. They wanted to get ahead of a problem. He reiterated Frank's comment that if they'd continued the project at the January meeting, it probably would have been denied. They were trying to help the applicants by going down that road.

Wally said the bedrock at the house solved the problem of the house sliding down the hill. How deep was the bedrock? He wondered because they had a 5 1/2-foot deep sump that was 30 feet long for [inaudible] in the driveway. If the bedrock was 2 feet down, there wouldn't be room for a 5 1/2-foot deep sump and also the water could run down to the lake on the bedrock under the dirt. Jeff said the soils weren't gravelly so it wouldn't run into the lake. They were 3 or 4 feet from the bedrock. Brooke said it was 6 feet. Wally said the front of the site had the sump, driveway and road. It was 5 1/2 feet deep and 30 feet wide. Jeff said the bedrock could be chipped out of there. Wally said he just didn't want to see the water from the sump get on the rock and go. Jeff said the soils weren't the type where it would go. It was a cobbly clay silt loam on top of the bedrock. The bedrock was fractured. The geotech person had no problem with it. He had the report to turn in. He wasn't going to turn it in right now because he didn't want to delay things, since it was requested as a condition.

Johna brought up a state law that said you couldn't design sewer systems unless you were a registered sanitarian or an engineer. The staff report suggested moving the drainfield and she thought that was a problem. The septic permit was ready to be issued on this, pending the other approvals. Putting the sewer up the hill would create extreme disturbance beyond what was proposed. It would still require a conditional use for slope disturbance. She thought the excavation would be wider than 2 to 5 feet in width and wondered where the excavated materials would go. She didn't think this was a better alternative. It required taking out trees and vegetation and crossing the road three times. Three other landowners used the road. This area was heavily treed. The main house building site as proposed by the applicants was a good fit for the building design. She hadn't seen the geotech report but had discussed it. She referred to the 2/5/16 staff report and had the same concerns as Frank. In the 2/5/16 staff report, #15 (on pg. 18) stated the information didn't provide information certifying the ability to build on slopes over 25%. This wasn't an accurate statement that she wanted struck from the staff report. It also discussed alternative building sites. The applicants had worked for over two years on the site layout to meet the other requirements. It seemed unreasonable and unfair to modify the plans at this juncture. If they moved it according to the staff changes, nothing was researched as far as stormwater, setbacks and setbacks of septic or of structures. No thought was put into how the staff changes would affect the application as a whole. It greatly affected it.

Johna saw the need to revise the first staff report because the guest house needed a conditional use permit. She didn't know why other parts that didn't pertain to the guest house were revised. The slope had been okay in the January staff report and it wasn't in the new report based on the same study. She thought there should have been a separate report for the guest house. If the Board was looking at approving the conditional use, variance and guest house, they could modify the findings of fact from the January staff report and use the conditions of approval from the 2/5/16 conditions and terms and strike the staff analysis of 2/5/16 except for the analysis pertaining to the guest house.

LaDana pointed out the Board was responsible for making their own findings. Johna said she hadn't seen that happen in this Board. Frank said they rewrote findings where they disagreed with the staff recommendation. Staff helped because they hadn't done it before. Steve remarked they'd done several.

Brooke Johnson, the applicant's sister, spoke on behalf of the applicants. She outlined their history with the property. They bought the property in 2013 with the intention of building in 2015. They hired an engineer, an excavator, a contractor and an attorney. They answered questions and responded as quickly as they could. Brooke became involved in December. She reported that Holly was called by Robert the Thursday prior to the January meeting and told the stuff looked awesome. Robert said he didn't recall that. Brooke said the next day, Holly got an email that this was a mess and items were needed. They got everything together that was requested. The item was tabled where things looked good, based on 5 things. The same thing happened in February, where Holly got an email on late Friday afternoon that she would be denied. This was why they asked for an extension. They had a February deadline with their contractor to get on his summer building list so they missed another summer. They wanted to protect the lake and had gone above and beyond. She wanted the Board to know they tried to comply. She thought there had been a lot of unnecessary red tape. The applicants were frustrated and stressed, having spent extra money to make this as easy as possible and it hadn't been easy. She questioned the legalities. Regarding putting the septic along the road, the road crossed onto other properties. If you were on the property, you would see that. It didn't [do that] on the plat the County had. There wasn't enough room to do that without getting an easement from the adjacent property, in addition to what Johna pointed out.

Frank recalled asking why they were getting into the septic and well in the first discussion. This was a new concept being tried, which was a performance approach. Every piece of land and every situation was different. They had to be somewhat flexible to get the positive effect on the environmental concerns and so forth. They took an oath to go by the rules and that's what they tried to do.

Steve asked if there was an option to quickly hear Robert's thoughts on the changes in the findings. Robert replied the findings in January were essentially denial. [Staff] proposed modification for the moving of the drainfield to a different location and other aspects to be considered because they didn't want to deny it. It wasn't smooth sailing. They weren't okay with the project as it was. The difference in February was they got information from Jeff saying this was the appropriate location and they needed to

evaluate the location, which was included in the report. The information said the only appropriate locations were where things were. [Staff] responded by saying they needed to know for sure that the site was stable. They wouldn't know that without having the soils study to say that. Staff position, not that it was a Board requirement, was that they wanted to know the soils were stable before they would recommend approval. If the Board was comfortable making a decision different than that, that was fine. Steve checked that the soils test was a condition, and still was. Approval with that condition would be a reasonable thing. Robert said it would be if that was how the Board felt.

Robert said staff recommended denial of the project. Steve said not in January and Robert agreed. That was based on modification of the project that included sanitation aspects. The sanitation would have moved to a different location, relieving some of the impacts. Steve thought that was because they couldn't move the well and didn't want to drill the well so close to the house and also the lake. Robert said there was also a soils concern if you read the findings. The findings talked about the high groundwater that was seen in the East Shore. They'd seen significant erosion in these areas such that houses had unraveled from their foundations on the sloped site. It was a 'big picture' piece. It wasn't just sanitation concerns. They were concerned with stability of slope.

Frank agreed with Steve that he understood the soils issue as being a condition based on approval of the request. Then soils testing would proceed. If the soils weren't okay, they'd have to come back to the Board. Those were conditional issues. He asked if the planners disagreed with the sanitation if the septic system was approved. Robert said they weren't denying the sanitation aspects. They were concerned about the development proposal: the structures and buildings. The idea with sanitation in January was that they were adding water to the soils in an area already known to have unstable soils. They were proposing to disturb and build on increased slopes. [Staff] wanted to see the added water moved away. Frank thought the rules and regulations said to hire a PE, who said it was okay. Robert said that was based on the system. It didn't mean the overall impacts were necessarily okay with that system. There was more to it than just the septic site. The Board was reviewing the slope stability. They proposed to build on and disturb slopes. Then they proposed a larger-sized guest house. There were impacts associated with that beyond just the system. They weren't looking at the design of the system. They were looking overall.

Frank said engineers looked at the overall system too. A beautiful system could be designed and 5 or 10 years later, the house could end up in the lake. Robert and LaDana said they'd seen this on the East Shore. Frank said it was the PE's liability, not the County. Robert said one reason for the Board of Adjustment was to try to prevent that. Frank said he was caught in the dilemma of how far the Board's authority went, in terms of professional decisions. He sided with the professional engineer and those licensed by the State to be competent to do this, and are covered by malpractice insurance. Robert said to keep in mind they actually did see soils stability tests with these types of requests. LaDana said they saw them on the more difficult sites. Hearing that there's bedrock where they're putting the drainfield, where would the water go? Jeff said there was no bedrock where the drainfield was. LaDana asked if it would hit bedrock as it went down

the hill. Jeff said there was an old drainfield for the old house. It never caused a problem. It was above where the house would be. There were no signs of groundwater. As an engineer, he looked at everything. He had a liability. A lot of thought went into the design. He didn't know who you went to if you didn't take the word of the professionals licensed to do it.

Steve commented that a sand mound system evaporated a lot of the moisture rather than soaking it into the soils. Less water would run through the soils potentially if they had shallow slope-solid bedrock issue all the way to the lake. A sand mound would minimize or mitigate some of that additional water into the soils.

Brooke said the adjacent Averill property had been built upon in the 1970's. They cut out a big wall and had very little erosion of that. Roughly 20 feet above that was their septic system. It had been in for 20 years. It hadn't moved at all. It was a ground system. Jeff said they looked at similar slopes for stability. This slope right next to it was a lot steeper with a drainfield above it. There were no problems with slope stability. LaDana said they weren't questioning that. Especially in the last few years, they'd seen streams where they'd never seen anything. That was why they questioned. They were concerned. She mentioned a West Shore project that came to the Board with bedrock where they couldn't do anything with the stormwater. The concern was whether they had enough protection since they were so close to the lake. They wanted to make sure the lake was protected. They understood that was what the engineers wanted. Jeff said that was what [the applicants] wanted to do too. He thought it could be addressed. She checked that he felt there were enough soil and so forth that his stormwater plan could address that. Jeff did.

Frank checked that with bedrock, different kinds of rock might be permeable or non-permeable and react differently. Was this accurate? He deferred to those who had done the testing. He asked about accepting the soils testing. LaDana said they'd put those in as part of the conditions. Steve said the challenge was the conditions. He didn't think they could go back to the other ones. Robert said those might be the ones they could work with to change. Steve asked Robert to look at the new findings to find those pertaining to the guest house, which they really hadn't discussed. Robert said they could vote separately on the guest house and adopt the findings related to that.

Steve asked for the total square feet for the main house proposal rather than the footprint. Jeff said the building was 30 x 60 with two floors. LaDana turned to the information on pg. 22. These were written as they standardly were. The Board looked at those. They mentioned specifically that a through e were good. Frank said these said it was okay.

Motion made by Frank Mutch, and seconded by Don Patterson, to approve the conditional use for the guest house as stated in the application and subject to the conditions and findings in the report. Motion carried, all in favor.

Steve checked in with Robert, who was working with the January report to find the portions the Board could work with. Steve referred to pg. 19 of the January report and

asked what the modifications were. Robert said that was the sanitation aspects. LaDana said that one was looking at whether it was harmonious with the zoning. They had a stormwater plan. They were going to condition the soils suitability study. She thought they could come up with something for that one. Steve asked about conditions in the January one that would need to be included. Johna thought the ones for Feb. 5th were the ones they could use and modify most easily.

Steve compared the amount of disturbance. January had approval for disturbance of 5400 square feet. February went back to 3850. Robert said that was because the applicants changed part of the slope disturbance proposal. Steve checked that the 3850 was enough. Jeff thought that should be pretty close. Jeff recalled a 5-foot item added. Robert reminded that the access and parking changed. Steve said the parking behind the house wasn't happening. The parking would be where some of the construction disturbance would be. They could bump it to 4000 to give a little room. Johna mentioned 500 square feet and suggested 4300 square feet. Jeff thought that would be pretty good. Steve changed the 3850 to 4300 in condition # 1. Frank said to add a period after the 4300 square feet of disturbance. Steve noted Frank was looking at findings while Steve was looking at conditions. The February conditions might be okay. Johna pointed to #2 (pg.28), where the site plan date should change to 1/25/16 from 11/27/15. LaDana pointed to #8 (pg. 29) where 'approved site plan' might be followed by citing the date of the plan. Steve suggested they add 'dated 1/25/16' after 'approved site plan'. LaDana suggested modifying #4 to clarify that the square feet of each level. The question had come up with some projects. Steve added the word 'total' at the end of the first sentence in #4.

Robert turned to pg. 19 for the findings in the January report. Frank mentioned in A (pg. 19), 'approximately 3,850 square feet of disturbance...' changed to 'approximately 4,300 square feet of disturbance' and then a period, scratching the last 3 lines. Robert said the second paragraph of b needed to change. Frank suggested scratching the first sentence. Robert suggested adding 'If approved' at the beginning of the sentence and Steve noted 'in addition' would be scratched. Robert approached the second sentence in c for a change, suggesting, "If the proposal is approved, this should help preserve the area's existing character. In d, i would go away. Steve reminded they needed to change 5,400 to 4,300 in d. Johna thought the first sentence needed work. Robert suggested, "If the proposal is approved, the proposed development, which includes the disturbance of approximately 4,300 square feet of slopes exceeding 25%, should not be hazardous or disturbing to existing or future neighboring uses if:" Robert crossed out both i and ii. In viii, 'modified' would change to 'implemented'. Steve verified with Robert that iii, iv, v, vi and vii stayed as they were. Frank asked about renumbering. Robert said that would happen. In e, Johna suggested taking out, 'If the proposal was modified' at the beginning. Robert removed the first two lines in f, up to 'current location'. It would be replaced with, "If information is submitted demonstrating soil stability" and pick up with, "then the proposed development...." Frank suggested adding 'adequate' to describe the soil stability (i.e. demonstrating adequate soil stability). Robert moved to the last sentence of the finding, which would state, "The applicants have addressed fire

department's needs for access, will be required to implement stormwater management techniques, and implement the best management plan....” Item g was good.

The group moved on to the variance for building. Robert began with a, where they could scratch out the second paragraph. In the first paragraph, where a sentence started with ‘a modified variance’, the rest of the paragraph could go away. Frank remarked that was a moot point. Robert continued in b, where they could replace “If the proposal is modified to relocate the proposed drainfield away from the development site and the existing well location is utilized to preserve existing water rights” with, “If approved”. On c, the sentence beginning “Other level areas...” would go away with the following sentence remaining. The last sentence would be modified to insert ‘approved’ in place of ‘modified to capitalize on these opportunities’. For d, he reworded it to read, “Location of the residence on slopes over 25% could be deemed reasonable if information is submitted to demonstrate adequate soil stability, thereby protecting the applicants’ investment in the property and preventing further hardship. For e, the second ‘no’ was removed. “The variance” would replace “A reasonable alternative exists that” in the second sentence, and ‘address’ would replace ‘mitigate for’. In that same sentence, ‘to modify their proposal’ and onwards would be replaced by ‘obtain certification of slope stability.’ In f, ‘approved’ would replace ‘modified...drainfield’ and i and ii would be eliminated and viii would be modified to insert ‘implemented’ in place of ‘modified as required and’. In g, ‘the’ would replace ‘a modified’. Following ‘stormwater management’ in g, the wording would change to ‘certification of slope stability’ with the rest deleted. In h, the first sentence would be deleted. The second sentence would begin, “Approval of the variance would allow”, with the removal of ‘Such modification and’.

Wally suggested adding one sentence at the very end of the finding of facts, which would read, “The proposal, based on changes in well design, stormwater discharge and mitigation, and sanitary sewerage treatment better meets the purposes of the ordinance than development without a variance.” If a variance got you closer to the purposes of the zoning, that was the reason for the variance and was a defensible decision. They bought this property zoned. This was changing the rules for their benefit, which they got because all the mitigation steps (engineering, et cetera) meant the impact was less this way than if they built the bare minimum of what the zoning ordinance allowed.

Motion made by Steve Rosso, and seconded by Don Patterson, to approve the conditional use for disturbance of more than 500 square feet of slopes greater than 25% and a variance to allow a structure to be placed on slopes exceeding 25% including the findings of fact as modified based on the January staff report and the conditions and terms as modified in the February staff report. Motion carried, all in favor.

Frank added minor changes in wording could go to Robert.

SIMONSON VARIANCES—UPPER WEST SHORE (6:30 pm)

Robert Costa corrected the reference to a COSA (Certificate of Subdivision Approval), since there actually wasn't one. He was speaking in general. Someone pointed to a

reference to COSA in the 2nd paragraph of pg. 12. Robert introduced Greg Simonson and agents Rick and Bob Breckenridge, and presented the staff report. (See attachments to minutes in the March 2016 meeting file for staff report.)

Steve asked about #4 (pg. 10). Robert explained this was a list of existing nonconforming structures prior to zoning. Steve confirmed with Robert that the shop was built with a bathroom in 2005. Robert said they had the 2005 permit. Steve asked if the apartment was a remodel of the existing square footage of the shop or an addition on the shop building. Robert replied records indicated it was an addition. They had floor plans showing new area. Frank asked if the shop/ guesthouse did not have adequate sanitation with the existing configuration. Robert answered that according to Environmental Health records, the system was sized for a 2-bedroom dwelling, which was what the 1988 residence was. Living quarters in the shop would not be accommodated as part of the septic system. If the Board approved it, Diana Luke (Environmental Health) commented that they could consider it. He didn't know if it could actually be done. If the Board approved it, they still had to get approval from Environmental Health to do that. Frank confirmed with Robert that one mobile home in yellow had been removed.

Rick Breckenridge spoke as the agent for the applicants. The property was purchased by Greg Simonson in 2014. It was a foreclosure. He lived elsewhere and wanted to rent the house. He also wanted to rent the apartment as a vacation rental on a part time basis. Did the zoning administrator have the authority to remove uses under the cessation portion of the zoning if the uses were approved by DEQ and previous Commissioner Board actions? In 1981, prior to the expansion, there were 32 spaces for rent in the RV park, a cabin and a mobile home. In 1981 they applied and got 11 expansions for 45 rentals. Right now, 42 were being utilized or 43 counting the cabin. They were still two under the threshold prior to 1990. In that zoning district, there were 823 parcels. Only 6 of them were commercial. He said [the Board] needed to evaluate each conditional use for unique and special characteristics. This was very unique and special. Part of the zoning district intent was to prevent the commercialization of residential uses. This [area] had not been residential since 1952. It had been an [RV] park. In 1979 there was a split-off. MDT (Montana Dept. of Transportation) took part of the property to expand the highway in the 1980's, which forced a realignment from the original 43 down to 42 due to the movement of the interior road. In 2005 they did the addition of the shop. They needed a zoning variance for the slope and to have the son live in there full time. That was approved by Environmental Health to hook that system in to the existing house as a change of use. They weren't using this full time. They had 45 for historical use and were only using 43 currently (42 plus the cabin). He gave out a handout proposing changes to the staff report. (See attachments to minutes in the March 2016 meeting file for handout.)

LaDana pointed out that she didn't think staff recognized the cabin. They'd had many reports over the year. Rick brought up the changes to the staff report that he proposed in his handout since he felt that would alter the conclusions. LaDana didn't think they needed to spend the time to alter the report. It could be pointed out as Rick's comments. Rick gave more comment per his handout. He repeated there were 32 original campsites,

11 were added and they had the cabin and a mobile home. They rented these out. Steve said that was 43 RV spots and 1 was lost before zoning. When zoning went in, there were 42 RV spots. Rick said the mobile home was in there as a rental too. Frank added there was a residence that was not a rental. Rick said historically they had 45 rentals so they weren't adding to the impact. They were actually one below the impact. He returned to the comments on his handout. For his comment on pg. 12, he felt using a residential standard on a commercial property was not in the spirit of the zoning regulations. LaDana asked if he thought the residential use was accessory to the business that was going on there. Rick said it was part of the commercial use. LaDana asked if he was suggesting it was an accessory use of that. He said they had a threshold that said they could have 45 rentals on there. They were below that threshold. They weren't having commercial creep.

LaDana understood that. They were trying to figure out this fit within the zoning. If he wanted to call it all commercial, that was fine. There were standards for commercial and expansion of businesses. Wally asked if it was zoned commercial. LaDana replied commercial was allowed as a conditional use. Wally said [inaudible]. Steve added there were 4 districts in the zone. Some subdistricts allowed commercial and some did not. This one did. He was involved with the initial zoning that was finally adopted in 1994. Many residents didn't want commercial anywhere but recognized the fact that people had been there a long time with some commercial going on. They didn't want to kick those people out or cause a problem. They tried to write this in a way that those that were existing could be there and continue with what they were doing. They didn't want to grow the commercial part, which was probably why they made it a conditional use. If somebody was in an area that allowed it as a conditional use, they would have to come to the public and ask what the public thought. Wally said the problem was that if it was there beforehand, and if 45 units were there in 1980 and it was rezoned in the 1990's, you had a legal nonconforming use. You couldn't then make it conditional. Rick said they built the guest house after 1994. That was a conditional use. That was why they were back here. LaDana added that was in the 2000's. Rick said that was under this Board's authority but they had 45 rental units on the whole thing. The highway department took out part of one and a mobile home was pulled out. He referred again to the threshold. LaDana said the mobile went away. Once the mobile went away, you lost that. Rick said that was approved by DEQ as part of the COSA. Steve saw a problem where they had a prohibited use of rental of more than one individual living unit. The conditional use was a recreational vehicle [inaudible]. It wasn't a multi-family residential living area. Those 45 original places were not all RV sites. If they were, it would be different. There had been a distinction about rental versus family living places, especially with vacation rentals. Those could turn over every weekend or every night conceivably. That was a different type of use than renting a house to someone for year-round living. That was part of what you had to weight. Rick said part of the nature of the park was it was transitory for everyone there. That was the reason the public water supply system for the whole system was transitory so they didn't have to do certain things. They drew lake water out and treated it. This request was in keeping with that use, with no one there for more than 30 days.

Steve asked if someone came in with a proposal to convert the RV sites to structures. LaDana said the Johnsons tried that. They came in with a proposal to put Park models on there at one point. She didn't recall the outcome.

Greg Simonson talked about Park models. As long as it was titled or labeled as an RV and 700 square feet, he thought they were okay. LaDana said their plan was having additions and so forth on there, that wouldn't comply with the RV standards. It seemed like they wanted more and would need bigger spaces. It was going to require subdivision review. They came to the Board of Adjustment first. It never went anywhere.

Wally thought if you had a historical 45-unit cap based from 1980 and the rest, and you had a conditional (recording cut off at this point).

(Note: Recorder difficulty occurred at approximately 7 pm. The last 15 minutes of the meeting did not record. That last portion of the minutes is based on notes.)

Wally described if long-term residential use was the point of the zoning, then having a residence instead of a vacation rental was more in keeping with the zoning. There was a lesser impact to the occupation. Steve said it depended on how many places. Wally pointed to one house and one site. Steve mentioned the 42 RV sites and 3 physical buildings. Would you rent two dwellings or three and would that be long term or short term? If short-term, how would you regulate it? LaDana mentioned a Finley Point property and a 3-structure example. Steve noted it was a prohibited use. A variance couldn't work for a prohibited use. Rick said it was permitted for rentals. LaDana mentioned declaring a commercial property. Rick said the apartment had already been to the Board and approved. It happened and then ceased. The impact was from prohibited use.

Wally confirmed with Rick that there was one building. He said the rest of the use was legal nonconforming. The problem was those didn't have variances. If they burned down more than 50%, it would be controlled by zoning. It would be built post-ordinance. Steve said only one was new. The ordinance specified one was allowed. All houses prior to the zone counted. Wally talked about conforming versus legal nonconforming. Steve said they built the [first] house before zoning. The second was subject to zoning. Wally commented to only count legal nonconforming. The other was added in 2004 and got a variance then. LaDana noted the variance approval had sunsetted. Rick said one rental was allowed. LaDana said the mobile was gone so they couldn't look at it. Rick mentioned the DEQ approval for a mobile. LaDana said the mobile went away. They had to say how it met zoning. Steve said he needed more than DEQ.

Rick pointed to the history. Wally asked if the use was for a mobile home or mobile home site and gave a Missoula example. Steve asked about if a guest house was built. Wally mentioned legal nonconforming and 'ifs'. Rick asked what happened if the house burned. Wally said it was gone. LaDana said the mobile was gone. Wally said if more than 18 months passed, it was no longer a site. Rick said it was used for an RV site.

LaDana said they needed to demonstrate this was within 18 months after it was removed. Steve referred to the 43 RV sites.

The group brought up the question to table this item to continue the discussion at the next meeting.

Motion made by Frank Mutch, and seconded by Don Patterson, to table. Motion carried, all in favor.

Frank Mutch, acting chair, adjourned the meeting at 7:15 pm.